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No. 83-1348

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

COUNTY OF ST. LOUIS, STATE OF MINNESOTA,

and

MINNESOTA CHIPPEWA TRIBE,

Petitioners,

v.

THE FEDERAL LAND BANK OF SAINT PAUL,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does application of the Minnesota tax on severed mineral interests—imposed by Minn. Stat. § 273.13, Subd. 2a, at the rate of $.25 per acre—to mineral interests owned by a federal land bank violate 12 U.S.C. § 2055, which exempts federal land banks from all forms of federal, state and local taxation "except taxes on real estate . . . to the same extent, *according to its value,* as other similar property held by other persons is taxed"? (Emphasis added)

The Minnesota Supreme Court held that the tax violates 12 U.S.C. § 2055.

2. Alternatively, does the tax violate the equal protection and due process clauses of the fourteenth amendment to the U.S. Constitution and the uniformity and due process clauses of the Minnesota constitution because some of the mineral interests on which it is imposed have at most "speculative" or "uncertain" value?

The Minnesota Supreme Court did not reach Question 2 because of its holding with respect to Question 1.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-1348

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE PAYMENT OF THE TAX ON MINERAL INTERESTS ASSESSED PURSUANT TO MINN. STAT. § 273.13, SUBDIVISION 2a, AND REMAINING DELINQUENT ON THE FIRST MONDAY IN JANUARY, 1977, 1978 AND 1979, FOR THE COUNTY OF ST. LOUIS, STATE OF MINNESOTA

COUNTY OF ST. LOUIS, STATE OF MINNESOTA,

and

MINNESOTA CHIPPEWA TRIBE,

Petitioners.

v.

THE FEDERAL LAND BANK OF SAINT PAUL,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Respondent (the "Bank") is a federally chartered instrumentality of the United States. 12 U.S.C. § 2011. It was

established in 1917 pursuant to the Federal Farm Loan Act of 1916[1] and was continued under the Farm Credit Act of 1971[2]. The Bank is engaged in making long-term real estate mortgage loans to farmers, ranchers, growers and rural residents located in the Seventh Farm Credit District (Michigan, Minnesota, North Dakota and Wisconsin). The Bank's loans are originated through 55 Federal Land Bank Associations ("Associations") over which the Bank has certain supervisory responsibilities. The loans are generally made for the purpose of enabling the borrowers to acquire or improve farm, rural residence or farm-related business real property.

The Bank's purpose is to provide long-term mortgage loans for agricultural and rural residence purposes at the lowest possible interest rate. The Bank and the Associations are organized in a manner similar to cooperatives. A borrower is required to become a member of his Association and to purchase stock (in the case of farm loans) or participation certificates (in the case of rural residence and farm-related business loans) in his Association in an amount equal to five percent of the loan. The Association, in turn, is required to purchase a like amount of stock or participation certificates in the Bank. The Association and Bank stock and participation certificates are retired when the loan is repaid. All of the stock of the Bank is owned by the Associations. The Bank, after providing for reserves as required by law and for net worth objectives necessary

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[1]Act of July 17, 1916, ch. 245, 39 Stat. 360.

[2]Pub. L. 92-181, 85 Stat. 583. Pub. L. 92-181, as amended, is currently codified at 12 U.S.C. §§ 2001 *et seq.* A general history of the federal farm credit system is set forth in *United States v. Mississippi Chemical Corp.*, 405 U.S. 298, 301-305 (1972).

for sound business operations, may distribute any net earnings among the Associations in the form of dividends. The Associations in turn may distribute dividends to their shareholder-borrowers[3].

During the Depression of the 1930's, the Bank became the unwilling owner of many farms acquired by foreclosure or deed in lieu of foreclosure. The Bank sold these farms to farmer-operators as rapidly as possible at fair prices in relation to prevailing market values. Many of these sales were at prices lower than the unsatisfied debts held by the Bank. With the hope of ultimately recovering all or a part of the resulting losses through eventual mineral development, the Bank adopted the policy of reserving mineral interests when selling properties.[4] At the end of 1980, the Bank owned about 3,200 severed mineral interests in the State of Minnesota. These interests were scattered through 85 of the 87 counties in the State and covered about 484,000 acres. The Bank's Minnesota mineral interests have produced almost

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[3]Most of the loans made by the Bank since 1969 have provided for variable interest rates, which means that the interest rates on the loans are adjusted from time to time to reflect the Bank's cost of borrowing funds and its general financial experience. As a result of the Bank's variable interest rate loans and its organization in a manner similar to a cooperative, the earnings of the Bank inure to the benefit of its borrowers in the form of reduced interest rates or dividends. *See* Pet. at A5-6 (Minnesota Supreme Court decision).

[4]The Bank's reservation created a "severed mineral interest," which is an interest in minerals that is separate from the ownership of the surface. Most of the Bank's mineral interests are 50% interests. The remaining 50% interest is usually owned by the surface owner. The reservation of severed mineral interests by a federal land bank is a valid method of increasing the Bank's recoveries on defaulted obligations, furthers the Bank's governmental functions, and is subject to the normal rules set forth in 12 U.S.C. § 2055 with respect to the tax status of the Bank's property. *Federal Land Bank of Wichita v. Board of County Commissioners*, 368 U.S. 146, 152, 155-156 (1961).

no income for the Bank. *See* Pet. at A6 (Minnesota Supreme Court decision).

Minn. Stat. § 273.13, Subd. 2a, imposes an annual tax of $.25 per acre on severed mineral interests not otherwise taxed. This statute was enacted in 1973 and became effective beginning with taxes assessed in 1975 and payable in 1976. Pursuant to the statute, taxes on severed mineral interests owned by the Bank have been assessed each year in many counties of the State. The Bank did not pay the assessed taxes, and filed answers in district court tax delinquency proceedings with respect to them. The tax delinquency proceedings relating to taxes assessed in St. Louis County for the years 1975-1977 were transferred from district court to the Minnesota Tax Court. The Bank contended, *inter alia*, that the tax as applied to its property violates 12 U.S.C. § 2055, which provides in relevant part:

> *Every Federal land bank* and every Federal land bank association and the capital, reserves, and surplus thereof, and the income derived therefrom *shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate* held by a Federal land bank or a Federal land bank association *to the same extent, according to its value, as other similar property held by other persons is taxed.* (Emphasis added)

The Bank's position is that under 12 U.S.C. § 2055 a real estate tax may not be imposed upon the Bank's property unless it is a tax related to the value of the property. Since severed mineral interests in Minnesota vary greatly in value,[5] a tax on those interests measured by acreage is not

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[5]The Tax Court found that severed mineral interests "vary greatly in value depending upon the type of minerals that geologists reasonably anticipate are beneath the surface and the cost of extracting these minerals." Pet. at A18.

a tax related to value and, as applied to the Bank, violates 12 U.S.C. § 2055. The Minnesota Tax Court held adversely to the Bank's position. On appeal the Minnesota Supreme Court reversed the Tax Court, holding that the Bank is exempt from tax under 12 U.S.C. § 2055.

REASONS FOR DENYING THE WRIT

I.

THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR GRANTING THE WRIT AND THIS CASE DOES NOT INVOLVE AN IMPORTANT QUESTION OF FEDERAL LAW THAT NEEDS TO BE SETTLED BY THIS COURT

Petitioners (the "State") have not identified any ground set forth in Rule 17 for the exercise of discretion to review this case. The decision of the Minnesota Supreme Court is clear and well-reasoned; the court held that "since the severed mineral interest tax pursuant to § 273.13, subd. 2a, is unrelated to value, section 2055 precludes its imposition on the Bank's interests." Pet. at A9.

This decision does not conflict with the decision of any other state court of last resort or federal court of appeals. *See* Sup. Ct. R. 17.1(b). Indeed, this is the first case in which the meaning of the "according to . . . value" language of 12 U.S.C. § 2055 has been in issue. *See* Pet. at A7-8 (Minnesota Supreme Court decision). Moreover, the case does not present "an important question of federal law which has not been, but should be, settled by this Court." *See* Sup. Ct. R. 17.1(c). Minnesota and Colorado are the only states of which the Bank is aware that presently tax severed mineral interests by special statute on the basis of

area rather than value. *See* Colo. Rev. Stat. § 39-1-104(4) (1973) (if no value can be readily determined for purposes of *ad valorem* taxation, a minimum valuation of $1.00 per acre is to be used). The issue presented in this case is thus not likely to be a recurring one. In short, this case involves the application of statutory language that has never before been applied and that has now been applied in the context of a tax that presently exists in only two states.

The State argues simply that the decision of the Minnesota court is incorrect on the alternative grounds that (a) Section 2055 does not require that real estate taxes bear any relationship to value or (b) if Section 2055 does require a relationship to value, that requirement is satisfied in this case because the Minnesota tax is allegedly a "minimum" tax appended to an *ad valorem* tax system. We address the two grounds in Parts II and III, respectively.

II.

SECTION 2055 REQUIRES THAT ANY REAL ESTATE TAX IMPOSED ON A FEDERAL LAND BANK BE RELATED TO VALUE

Section 2055 provides in substance that (1) a federal land bank is "exempt from Federal, State, municipal, and local taxation," except that (2) real estate held by a bank may be taxed "to the same extent . . . as other similar property held by other persons is taxed," but (3) if, and only if, the real estate is taxed "according to its value." Thus, a real estate tax imposed upon the Bank must be both nondiscriminatory (Clause 2) *and* related to value (Clause 3). The Bank is exempt from the Minnesota tax because that tax is not imposed upon real estate "according to its value" and thus fails to satisfy the requirement stated in Clause 3.

A. The Legislative History cited by the State does not Bear upon the "According to . . . Value" Language of the Statute.

Ignoring the explicit requirements of Section 2055, the State argues that the debate in Congress surrounding the enactment of Section 2055 and its antecedents "demonstrate[s], without qualification, that Federal land bank real estate is subject to fair, non-discriminatory real estate taxation." Pet. at 11. However, none of the legislative history to which the State refers is related to the statutory requirement that real estate be taxed "according to its value." The legislative history consequently has no bearing upon the issue presented in this case.

The provisions of 12 U.S.C. § 2055 originated in Section 26 of the Federal Farm Loan Act of 1916.[6] The State relies upon statements made in the Senate floor debate on the 1916 bill. *See* Pet. at 11-13. These statements, however, are unrelated to the "according to . . . value" language of the statute and have very little to do with real estate taxation.

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[6]Section 2055 was adopted in 1971 as part of the Farm Credit Act of 1971, Pub. L. 92-181, 85 Stat. 583. *See* Title I, § 1.21, 85 Stat. 590. The 1971 law is a recodification of provisions formerly found at 12 U.S.C. §§ 931 and 933. The intention of Congress in 1971 was to reenact existing law with certain minor technical corrections. H.R. Rep. No. 92-593, 92d Cong., 1st Sess. 19 (1971); S. Rep. No. 92-307, 92d Cong., 1st Sess. 22 (1971). Sections 931 and 933 substantially embodied the first and third paragraphs of Section 26 of the Federal Farm Loan Act of 1916, ch. 245, 39 Stat. 360. *See* 39 Stat. 380. The third paragraph of Section 26 was apparently derived from a proviso of Section 41 of the National Bank Act of 1864. *See* Act of June 3, 1864, cr. 106, § 41, 13 Stat. 99, 111-112; Rev. Stat. § 5219. This proviso, which applied to national banking associations until its repeal in 1969, was that the Act did not "exempt the real estate of [national banking] associations from either state, county, or municipal taxes to the same extent, according to its value, as other real estate is taxed." *See* 12 U.S.C.A. § 548 (West 1969).

The debate focused on whether Congress had the constitutional power to—and should as a matter of policy—exempt from taxation the revenues, mortgages and capital stock of federal land banks and the bonds that they were authorized to issue.[7]

The State refers to a statement of Senator Dillingham of Vermont. Pet. at 11-12. The statement relates to the taxation of mortgages rather than real estate. The State also refers to a statement of Senator Cummins of Iowa. Pet. at 12. Senator Cummins was one of the leaders in opposition to *any* tax-exemption for federal land banks, and his statement relates to the tax status of property generally rather than real estate. *See* 53 Cong. Rec. 7306 (1916). Finally, the State refers to a statement of Senator Hollis of New Hampshire. Pet. at 12-13. Although Senator Hollis does refer to real estate, his statement does not aid the State's position because he opposed the exemption of real estate from *any* form of taxation.

In short, the 1916 debate contributes nothing to an understanding of the "according to . . . value" language of the statute. Neither is anything added by the 1971 legislative history cited by the State. *See* Pet. at 13-15. As that legislative history clearly establishes, Congress did not review, and did not intend to modify, *any* aspect of the tax status of federal land banks in 1971. Moreover, the "according to . . . value" language of the 1916 legislation was preserved intact.

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[7]The power of Congress to create federal land banks and to provide for their exemption from state and local taxation has since become well established. *See, e.g., Federal Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95 (1941); *Federal Land Bank of New Orleans v. Crosland*, 261 U.S. 374 (1923); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921).

B. The Decision of the Minnesota Supreme Court is Consistent with Applicable Principles of Statutory Construction, the Judicial Construction of Similar Language, and Important Federal Policies.

1. Principles of Statutory Construction.

The Minnesota Supreme Court's application of Section 2055 to this case reflects two fundamental principles of statutory construction. First, the court applied the "plain meaning" of the statute. *See* Pet. at A8 (Minnesota Supreme Court decision). This Court has long recognized that the function of a court when confronted by a statute with language so plain as to require no construction is to apply the statute according to its terms. *See, e.g., Caminetti v. United States,* 242 U.S. 470, 485 (1917); *Helvering v. City Bank Farmers Trust Co.,* 296 U.S. 85, 89 (1935).

Second, the Court gave meaning and effect to each clause of the statute. *See* Pet. at A8 (Minnesota Supreme Court decision). Courts are obliged to give effect, if possible, to every provision of a statute and to avoid a reading that renders part of a statute a mere redundancy. *See, e.g., Jarecki v. G. D. Searle & Co.,* 367 U.S. 303, 307-308 (1961); *United States v. Menasche,* 348 U.S. 528, 538-539 (1955). The construction of Section 2055 adopted by the Minnesota court gives weight and content to all of the statutory language by recognizing that the statute imposes two distinct requirements with respect to the real estate taxation of federal land banks: the tax must be *both* related to value *and* nondiscriminatory. The State's construction, on the other hand, effectively deprives the "according to . . . value" language of any meaning. If Congress had

intended simply to require that real estate taxes imposed upon federal land banks be nondiscriminatory, as the State asserts, it could have omitted the clause "according to . . . value" and authorized the imposition of real estate taxes on federal land banks "to the same extent as other similar property held by other persons is taxed."[8]

The State suggests that "practical" difficulties associated with the valuation of severed mineral interests justify taxation of the Bank's interests on the basis of area even though Section 2055 requires that real estate taxes upon the Bank be levied according to value. Pet. at 25-26. Practical difficulties, if they indeed exist, cannot justify ignoring the plain meaning of Section 2055. Moreover, it is doubtful that the *ad valorem* taxation of severed mineral interests is impracticable. Minnesota and Colorado are the only states of which the Bank is aware that presently tax severed mineral interests by special statute on the basis of area rather than value. See pgs. 5-6, *supra*. The principal difficulty in taxing severed mineral interests—identifying their existence and ownership—has been resolved in Minnesota by the enactment of registration provisions that provide for forfeiture of the interests in the event of failure to register. *See* Minn. Stat. §§ 93.52-93.58. It is also noteworthy that one of the reasons for the enactment of the Indiana registration statute sustained in *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), was to facilitate the *ad valorem* taxation of severed mineral interests. *See* 454 U.S. at 529.

The correctness of the decision of the Minnesota court is underscored and confirmed by this Court's subsequent

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[8]The State apparently concedes that its position may require the Court to disregard the "according to . . . value" language as "mere surplusage." Pet. at 25.

decision in *Aloha Airlines, Inc. v. Director of Taxation*, 78 L.Ed.2d 10, 104 S. Ct. 291 (1983). In *Aloha* the Court unanimously held that a Hawaii tax imposed upon the gross income of airlines is preempted by 49 U.S.C. § 1513(a). In reaching this conclusion, the Court emphasized that it was bound by the "plain language" of the federal statute and that it was not free to consider either the reasons for the action taken by Congress or its impact upon state tax systems. *See* 78 L.Ed.2d at 15 n.6, 16 n.10, 104 S. Ct. at 294 n.6, 295 n.10. The principles set forth in *Aloha* are clearly applicable here.

2. The Judicial Construction of Similar Language in other Federal Statutes and State Constitutions.

As we have noted, there are no reported cases interpreting the "according to . . . value" language of Section 2055 or its predecessor provision of the Federal Farm Loan Act of 1916. However, until 1969 the National Bank Act included language substantially identical to Section 2055. *See* note 6, *supra*. Although the issue in this case was not directly presented in cases arising under the National Bank Act, these cases do indicate that real estate taxes must be related to value. In *Land Title Bank & Trust Co. v. Ward*, 20 F. Supp. 810 (E.D. Pa. 1937), the issue was whether the phrase "according to its value" prevented a state from applying to a national bank that state's general rule that real estate taxpayers are personally liable for such taxes. The court held that the phrase did not preclude the application of the state's general rule, stating that the purpose of the statutory phrase was not to limit the manner of collection of the tax, but "to limit the tax which a state might levy to

an ad valorem tax levied upon the same basis on all real estate similarly situated in the taxing district." *Id.* at 812-813. The court stated that the statute allowed state and local taxation of the real estate of national banks if "such taxes shall be levied according to a definite percentage of the value of the real estate taxed, and . . . both the rate and basis of valuation applied to the real estate of a national bank shall be the same as those applied to other real estate within the taxing district similarly situated." *Id.* at 813. *Accord Miners National Bank of Butte v. Silver Bow County*, 116 Mont. 31, 148 P.2d 538, 539 (1944).

A number of old state-court cases establish that a property tax assessed on the basis of area (or other geometric criteria) is not a tax on real estate "according to its value." Most of these cases arise under state constitutions that required, in language substantially identical to that of Section 2055, that real estate be assessed according to value.[9] *See State v. Lakeside Land Co.*, 71 Minn. 283, 73 N.W. 970 (1898); *Stinson v. Smith*, 8 Minn. 326 (1863); *McCann v. Merriam*, 11 Neb. 241, 9 N.W. 96 (1881); *Atlantic & North Carolina R.R. v. Board of Commissioners*, 75 N.C. 474 (1876); *Pittsburgh, Cincinnati & St. Louis R.R. v. State*, 49 Ohio St. 189, 30 N.E. 435 (1892); *State v. Railroad Corporations*, 4 S.C. 376, 377 (1873); *McBean v. Chandler*, 9 Heisk. 349, 24 Am. Rep. 308 (Tenn. 1872).

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[9]The age of these cases is significant. They were decided during the era in which the National Bank Act of 1864 was enacted and under constitutions adopted during the same period. Thus, the interpretations placed upon the state constitutions are particularly good evidence of the intentions of the drafters of the National Bank Act and presumably of the legislative intent underlying the Federal Farm Loan Act of 1916 as well.

3. Federal Policies.

The Minnesota Supreme Court's construction of Section 2055 adheres to important federal policies underlying the establishment of federal land banks and their exemption from federal, state and local taxation. The Minnesota court clearly recognized that—because of the important role that federal land banks play as federal instrumentalities,[10]—special rules apply in construing statutory provisions relating to their tax status. Pet. at A10-11 (Minnesota Supreme Court decision).

When a federal instrumentality—such as the Bank—is generally exempt from taxation—as is the Bank under Section 2055—there must be a clear, express and affirmative statement of congressional intent to waive that exemption, and any purported waiver must be strictly construed against the taxing authority. *Federal Reserve Bank of St. Louis v. Metrocentre Improvement District No. 1,* 657 F.2d 183, 186 (8 Cir. 1981), *aff'd mem.,* 455 U.S. 995 (1982); *United States v. City of Adair,* 539 F.2d 1185, 1189 (8 Cir. 1976); *Reconstruction Finance Corp. v. Texas,* 229 F.2d 9, 12 (5 Cir.), *cert. denied,* 351 U.S. 907 (1956); *Board of Directors of Red River Levee v. Reconstruction Finance Corp.,* 170 F.2d 430, 433 (8 Cir. 1948). In this case, there has been no showing at all that Congress intended to permit the imposition of real estate taxes unrelated to value, and the statutory language demonstrates that the congressional intent was exactly the opposite. Furthermore, this Court held in *Federal Land Bank of St. Paul v. Bismarck Lumber Co.,* 314 U.S. 95, 100

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[10] *See Federal Land Bank of St. Paul v. Bismarck Lumber Co.,* 314 U.S. 95, 102 (1941); 12 U.S.C. § 2011.

(1941), that a "broad construction" of the predecessor of Section 2055 is indicated "by Congress's intention to advance credit to farm borrowers at the lowest possible interest rate."

C. The Ohio Oil and Reconstruction Finance Corporation Decisions are Distinguishable.

The State relies heavily upon two decisions of this Court as a basis for seeking review of the present case. The two cases are *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930), and *Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204 (1946). Neither case supports the State's position.

In *Ohio Oil* the Court held that the equal protection and due process clauses of the fourteenth amendment do not require that taxes be imposed upon an *ad valorem* basis.[11] This holding is inapplicable to the present case. The fact that the states are not required by the fourteenth amendment to adopt *ad valorem* tax systems does not mean that Section 2055 permits the imposition of taxes unrelated to value upon the property of federal land banks. In this case, the constitutional power of the State to impose a tax unrelated to value has been limited by federal statute.[12]

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[11]The Minnesota Supreme Court has similarly held that the uniformity clause of the Minnesota constitution (Art. X, § 1) does not require that property taxes be imposed according to value. *See Contos v. Herbst*, 278 N.W.2d 732 (Minn. 1979), *appeal dismissed*, 444 U.S. 804; Pet. at A40, A54-58.

[12]The possibility of such a limitation was contemplated by the Court in *Ohio Oil*:

> The applicable principles are familiar. The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, *and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution*, the States have the attribute of sovereign powers in devis-

In *Reconstruction Finance Corp.*, the Court considered a provision of the Reconstruction Finance Corporation Act relating to the taxation of real property owned by the RFC that was substantially identical to Section 2055. The issue was whether certain heavy machinery was "real property" and therefore subject to taxation under the federal statute. The Court held that Congress intended local law to apply in determining the scope of the term "real property" for purposes of the statute. The tax in question was clearly an *ad valorem* tax.[13] Acccordingly, no issue was presented as to whether the tax satisfied the "according to . . . value" requirement of the federal statute, and the decision has no bearing upon the present case. If the State means to suggest in citing *RFC* that local law should be applied in construing and applying the "according to . . . value" requirement of Section 2055, it cannot prevail even if it is correct because the Minnesota Supreme Court has held in this case that the tax on severed mineral interests is *not* imposed "according to . . . value."[14]

III.

THE TAX IS NOT IMPOSED ACCORDING TO VALUE

The State argues alternatively that, if Section 2055 requires that real estate taxes be related to value, that

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ing their fiscal systems to insure revenue and foster their local interests.

281 U.S. at 159 (Emphasis added). Here, of course, Minnesota seeks to trench upon the prerogatives of the national government as embodied in the tax exemption provided by Section 2055.

[13] *See Appeal of Defense Plant Corp.*, 350 Pa. 520, 39 A.2d 713 (1944), the lower court decision from which the *RFC* case was appealed.

[14] *See* Pet. at A9. As the Minnesota Supreme Court recognized in the present case (Pet. at A9 n.12), this holding was clearly foreshadowed by *Contos v. Herbst, supra.* Pet. at A54-58.

requirement is satisfied in this case because the Minnesota tax is allegedly a "minimum" tax appended to an *ad valorem* tax system. Pet. at 18-23, 25.[15] The State, however, cites no authority holding that a "minimum" tax is consistent with a constitutional or statutory requirement that taxes be imposed according to value.[16]

Moreover, the State's own hypothetical computations in the court below demonstrate that the tax cannot be dismissed as a "minimum" tax appended to an *ad valorem* tax system. On the basis of assumed assessment classifications and mill rates, the State has determined (a) that the value-related tax on a 40-acre tract with a value of $.15 per acre might reasonably be expected to be $.18; (b) that the value-related tax on a 40-acre tract with a value of $1.25 per acre might reasonably be expected to be $1.50; and (c) that the value-related tax on a 40-acre tract with a value of $50.00 per acre might reasonably be expected to be $60.00.[17] By contrast, the area-related tax at issue

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[15]The State liberally cites the decision of the Minnesota Supreme Court in *Contos v. Herbst, supra,* in discussing this point. Although the Minnesota court relied in *Contos* upon a trial court finding that all mineral interests *have* value in holding that the tax is constitutional, the court clearly implied that the tax is not imposed *according* to value, and that conclusion was made explicit in deciding the present case. See note 14 and accompanying text, *supra.*

[16]The State suggests that the Minnesota court imposed a "strict standard" that goes beyond the requirements of Section 2055. *See* Pet. at 21. This, of course, is not the case. The decision of the Minnesota court simply applies the explicit requirement of Section 2055 that taxes upon the Bank's real estate be levied according to value. This case does not present questions arising from the use of an imprecise or incorrect valuation method. The Minnesota statute makes no provision for valuation at all. The State's suggestion that "practical" difficulties justify taxing severed mineral interests on a basis other than valuation is incorrect. *See* p. 10, *supra.*

[17]This information is taken from the State's Petition for Rehearing to the Minnesota Supreme Court. In that document the State acknowledged that a value of $50.00 per acre would be "high" and that "most" mineral interests would be valued at closer to $1.25 per acre.

in this case on a 40-acre tract, assuming the ownership of a 50% mineral interest, would be $5.00 (40 acres x $.25 x 50%). Thus, the purported "minimum" tax is 27 times greater than the expected value-related tax if the value were $.15 per acre and 3⅓ times greater than the expected value-related tax if the value were $1.25 per acre. Under these circumstances, the tax on severed mineral interests cannot reasonably be reconciled with an *ad valorem* tax system.

IV.

THE TAX ON SEVERED MINERAL INTERESTS VIOLATES THE U.S. CONSTITUTION AND MINNESOTA CONSTITUTION

The second question presented by this case is whether the tax violates the equal protection and due process clauses of the fourteenth amendment to the U.S. Constitution and the uniformity and due process clauses of the Minnesota Constitution. Since the Minnesota Supreme Court decided the question under Section 2055 favorably to the Bank, it did not reach the constitutional question. Pet. at A3, A11. However, if the State's Petition were granted, the Bank would argue, as an alternative ground for affirmance of the Minnesota Supreme Court, that the tax is unconstitutional.[18]

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[18]The constitutionality of the tax was upheld in *Contos v. Herbst, supra*, in reliance upon a trial court finding that all mineral interests have value. In the present case the trial court found only that all mineral interests have at least "speculative" or "uncertain" value and implied that all mineral interests do *not* have "measurable present market value." The trial court held, however, that "speculative" or "uncertain" value is sufficient to satisfy constitutional requirements. *See* Pet. at A18. The Bank contended before the Minnesota Supreme Court that

CONCLUSION

There are no reasons for granting the Writ in this case. The case does not involve an important question of federal law and there is no conflict between the decision of the Minnesota Supreme Court and any other federal or state court. The decision of the Minnesota Supreme Court is consistent with applicable rules of statutory construction and with judicial decisions under the National Bank Act and state constitutional provisions similar to Section 2055. The State clearly has not shown that the decision of the Minnesota Supreme Court is incorrect. Accordingly, the Petition should be denied.

Dated: March 15, 1984.

Respectfully submitted,

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the trial court was incorrect in holding that "speculative" or "uncertain" value satisfied constitutional requirements and, in any event, that the trial court's finding that all severed mineral interests have "speculative" or "uncertain" value is clearly erroneous.